9 FAM 41.54

NOTES

(CT:VISA-2238; 12-19-2014)
(Office of Origin: CA/VO/L/R)

9 FAM 41.54 N1 INTRODUCTION

(CT:VISA-1417; 04-08-2010)

a. Section 1(b) of Public Law 91-225 of April 7, 1970, created a nonimmigrant visa (NIV) classification at INA 101(a)(15)(L) for intra-company transferees. An individual or blanket petition, approved by U.S. Citizenship and Immigration Services (USCIS), is a prerequisite for L visa issuance.

b. The L nonimmigrant classification was created to permit international companies to temporarily transfer qualified employees to the United States for the purpose of improving management effectiveness, expanding U.S. exports, and enhancing competitiveness in markets abroad. Prior to the enactment of Public Law 91-225, no nonimmigrant classification existed that fully met the needs of intra-company transferees. Those who did not qualify as E nonimmigrants were forced to apply for immigrant visas (IV) to the United States, even if there was no intent to reside permanently.

c. INA 101(a)(15)(L) was amended for the first time by the Immigration Act of 1990 (Public Law 101-649 of November 29, 1990) to provide that the required one-year period of continuous prior employment with the petitioner take place within three years, rather than immediately preceding the time of the alien's application for admission into the United States.

9 FAM 41.54 N2 CLASSIFICATION CRITERIA FOR INTRA-COMPANY TRANSFEREES

9 FAM 41.54 N2.1 Individual Petitions

(CT:VISA-1569; 10-04-2010)

The following elements are considered in evaluating entitlement to L-1 classification in individual petition cases:

(1) The petitioner is the same firm, corporation, or other legal entity, or parent, branch, affiliate, or subsidiary thereof, for whom the beneficiary has been employed abroad (see 9 FAM 41.54 N6 below);

(2) The beneficiary is a manager, executive, or an alien having specialized knowledge, and is destined to a managerial or executive position or a position requiring specialized knowledge (see 9 FAM 41.54 N7 below);

(3) The petitioner and beneficiary have the requisite employer-employee relationship (see 9 FAM 41.54 N8 below);

(4) The petitioner will continue to do business in the United States and at least one other country (see 9 FAM 41.54 N9 below);

(5) The beneficiary meets the requirement of having had one year of prior continuous qualifying experience within the previous three years (see 9 FAM 41.54 N10 below);

(6) If the beneficiary is coming to open, or be employed in, a new office, the requirements described in 9 FAM 41.54 N11 are met;

(7) Many L and H aliens are subject to time limits (see 9 FAM 41.54 N18 below), or the two-year foreign residence requirement for former exchange visitors (see 9 FAM 41.54 N23 below); and

(8) The beneficiary is not subject to the intending immigrant presumption of INA 214 B (see 9 FAM 41.54 N4 below).

9 FAM 41.54 N2.2 Blanket Petitions

(CT:VISA-1569; 10-04-2010)

In addition to those elements listed in 9 FAM 41.54 N2.1 above, the characteristics considered in evaluating entitlement to L-1 classification in blanket petition cases are specified below. (See 9 FAM 41.54 N13 below for a full description of the qualifying requirements and processing procedures for blanket petition cases.)

(1) The petitioner and its entities meet the requirements of size, structure, and scope of business activities for approval of L blanket petitions (see 9 FAM 41.54 N13.2 below);

(2) The beneficiary is a manager, executive, or specialized knowledge professional and is destined to a position for a manager, executive, or specialized knowledge professional (see 9 FAM 41.54 N13.3 below);

(3) The beneficiary is not coming to open or be employed in a new office (see 9 FAM 41.54 N13.3 below); and

(4) The petitioner has not filed an individual L petition for the alien (see 9 FAM 41.54 N13.3 below).

9 FAM 41.54 N3 SIGNIFICANCE OF APPROVED PETITION

9 FAM 41.54 N3.1 The Department of Homeland Security (DHS) is Responsible for Adjudicating L Petitions

(CT:VISA-1831; 05-01-2012)

a. By mandating a preliminary petition, Congress placed responsibility and authority with the Department of Homeland Security (DHS) to determine whether the requirements for L status, which are examined in the petition process, have been met. An approved Form I-129, Petition for a Nonimmigrant Worker, must be verified either through the Petition Information Management Service (PIMS) or through the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab, before a visa can be issued. The Form I-797, Notice of Action, is no longer required to be presented to a consular officer at the time of the applicant's interview. Verification of the approved Form I-129 through PIMS or PCQS is, in itself, to be considered by consular officers as prima facie evidence that in the case of a(n):

   (1) Individual petition, the petitioner and alien beneficiary meet the requirements for L status; or

   (2) Blanket petition (see 9 FAM 41.54 N13 below), the petitioner and its parent, branches, affiliates, or subsidiaries specified in the petition are qualifying organizations under INA 101(a)(15)(L).

b. The large majority of approved L petitions are valid, and involve bona fide establishments, relationships, and individual qualifications which conform to the DHS regulations in effect at the time the L petition was filed.

c. Posts generally must not request the Department to provide status reports on petitions filed with the Department of Homeland Security (DHS), nor must they contact DHS directly for such reports. As an alternative, posts may suggest that the applicant communicate with his or her sponsor. Cases of public relations significance may be submitted to the Department (TAGS: CVIS). Justification for such action must be included with post's request.

9 FAM 41.54 N3.2 Approved Petition is Prima Facie Evidence of Entitlement to L Classification

(CT:VISA-1831; 05-01-2012)

a. You should no longer require that an approved Form I-129, Petition for a Nonimmigrant Worker, or evidence that the L petition has been approved (i.e., a Form I-797, Notice of Action), be presented by an applicant seeking an L visa. All petition approvals must be verified either through the Petition Information Management Service (PIMS) or through the Person Centric Query Service (PCQS), in the CCD under the Cross Applications tab. Once you have verified approval through PIMS or PCQS, consider this as prima facie evidence that the

requirements for L classification, which are examined in the petition process, have been met. You may not question the approval of L petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status. The large majority of approved L petitions are valid, and involve bona fide establishments, relationships, and individual qualifications that conform to the DHS regulations in effect at the time the L petition was filed.

b. On the other hand, the approval of a petition by DHS does not relieve the alien of the burden of establishing visa eligibility in the course of which questions may arise as to his or her eligibility to L classification. If you develop information during the visa interview (e.g., evidence which was not available to DHS) that gives you reason to believe that the beneficiary may not be entitled to status, you may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.

9 FAM 41.54 N3.3 Consular Officers' Responsibilities

9 FAM 41.54 N3.3-1 Verifying Qualifications of Blanket Petition Beneficiaries

(CT:VISA-1693; 09-19-2011)

Since the individual beneficiaries of blanket petitions are not named in the petition, their eligibility for L status is not examined by DHS. Consequently, consular officers (or, in the case of visa-exempt aliens, immigration officers) are responsible for verifying the qualifications of alien applicants for L classification in blanket petition cases. (See 9 FAM 41.54 N13.5 below.)

9 FAM 41.54 N3.3-2 Determining Visa Eligibility

(CT:VISA-1693; 09-19-2011)

Consular officers do not have the authority to question the approval of L petitions without specific evidence, unavailable to DHS at the time of petition approval, that the requisites of INA 101(a)(15)(L) have not been met. On the other hand, the approval of a petition by DHS does not relieve the alien of the burden of establishing visa eligibility. If the consular officer has reason to believe, based upon information developed during the visa interview or other evidence which was not available to DHS, that the petitioner or beneficiary may not be entitled to status, the consular officer may request any additional evidence which bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.

9 FAM 41.54 N3.3-3 Referring Approved L Petition to U.S. Citizenship and Immigration Services (USCIS) for Reconsideration

(CT:VISA-1831; 05-01-2012)

a. You must consider all approved L petitions in light of these Notes, process and dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. Posts should refer cases to USCIS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by USCIS. You must have specific evidence of a requirement for automatic revocation, lack of qualification on the part of the beneficiary, misrepresentation in the petition process, or of previously unknown facts, which might alter USCIS' finding, before requesting approval of a review of the Form I-129, Petition for a Nonimmigrant Worker. When seeking reconsideration, the consular officer must under cover of Form DS-3099, NIV Petition Revocation Request Cover Sheet-Kentucky Consular Center, forward the petition, all pertinent documentation, and a written memorandum of the evidence supporting the request for reconsideration to the Kentucky Consular Center (KCC), which will forward the request to the approving USCIS office.

b. Send requests for petition revocations to the following address, using registered mail or express mail:

   Attention: Fraud Prevention Manager
   Kentucky Consular Center
   3505 N. Hwy 25W
   Williamsburg, KY 40769

c. The KCC will maintain a copy of the request and all supporting documentation and will track all consular revocation requests. You are no longer required to maintain a copy of all documents, although scanning the revocation request and supporting documents into the case file is recommended.

d. You should not send Blanket L Petitions back to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. For the proper procedure on how to refuse a Blanket L-based visa and how to dispose of the petition, you should reference 9 FAM 41.54 N13.7.

9 FAM 41.54 N4 ISSUE OF TEMPORARINESS OF STAY

(CT:VISA-1831; 05-01-2012)

L aliens are specifically excluded from the intending immigrant presumption of section 214(b) of the INA and are, furthermore, not required to have a residence

abroad which they have no intention of abandoning. In addition, INA 214(h) provides the fact that an alien has sought or will seek permanent residence in the United States does not preclude him or her from obtaining an L nonimmigrant visa (NIV) or otherwise obtaining or maintaining that status. The alien may legitimately come to the United States as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay, and, at the same time, lawfully seek to become a permanent resident of the United States. Consequently, the consular officer's evaluation of an applicant's eligibility for an L visa must not focus on the issue of temporariness of stay or immigrant intent.

9 FAM 41.54 N5 "INTRA-COMPANY TRANSFEREE"

(CT:VISA-1569; 10-04-2010)

"Intra-company transferee" means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm, corporation, or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

9 FAM 41.54 N6 STATUS OF PETITIONER

(CT:VISA-1569; 10-04-2010)

For the purposes of the L classification, a petitioner is a qualifying organization desiring to bring an alien to the United States as an L-1 nonimmigrant. It must be a parent, branch, affiliate, or subsidiary of the same employer for whom the alien has been employed abroad prior to entry. The petitioner may be either a U.S. or foreign organization.

9 FAM 41.54 N6.1 "Business Entities"

(CT:VISA-1569; 10-04-2010)

The Department of Homeland Security (DHS) uses the following definitions and descriptions of business entities in adjudicating L petitions.

9 FAM 41.54 N6.1-1 "Qualifying Organization"

(CT:VISA-1569; 10-04-2010)

"Qualifying organization" means a U.S. or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate, or subsidiary;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country, directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intra-company transferee; and

(3) Otherwise meets the requirements of INA 101(a)(15)(L).

9 FAM 41.54 N6.1-2 "Parent"

(CT:VISA-1569; 10-04-2010)

"Parent" means a firm, corporation, or other legal entity, which has subsidiaries. Any business entity, which has subsidiaries, is a parent. However, a subsidiary may own other subsidiaries and also be a parent, even though it has an ultimate parent.

9 FAM 41.54 N6.1-3 "Branch"

(CT:VISA-1569; 10-04-2010)

"Branch" means an operating division or office of the same organization housed in a different location. Any such office or operating division, which is not established as a separate business entity, is considered a branch.

9 FAM 41.54 N6.1-4 "Subsidiary"

(CT:VISA-1569; 10-04-2010)

a. "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly:

(1) More than half of the entity and controls the entity; or

(2) Half of the entity and controls the entity; or

(3) 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or

(4) Less than half of the entity, but in fact controls the entity.

b. The 50-50 joint venture can be owned and controlled by only two legal entities; all other combinations of a joint venture do not qualify as a subsidiary. A contractual joint venture does not qualify as a subsidiary. A parent may own

less than half of the entity but have control because the other stock is widely dispersed among minor stockholders; for example, when an individual or company acquires sufficient shares of a publicly held company to be able to nominate and elect the board of directors.

9 FAM 41.54 N6.1-5 "Affiliate"

(CT:VISA-1831; 05-01-2012)

a. "Affiliate" means:

(1) One of two subsidiaries, both of which are owned and controlled by the same parent or individual; or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity; or

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services must be considered to be an affiliate of the U.S. partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the U.S. partnership is also a member.

b. Subsidiaries are affiliates of each other. The affiliate relationship arises from the common ownership and control of both subsidiaries by the same legal entity. Affiliation also exists between legal entities where an identical group of individuals owns and controls both businesses in basically the same proportions or percentages. Associations between companies based on factors such as ownership of a small amount of stock in another company, exchange of products or services, licensing or franchising agreements, membership on boards of directors, or the formation of consortiums or cartels do not create affiliate relationships between the entities for L purposes.

9 FAM 41.54 N6.2 Relationship between Petitioner and Other Business Entities

(CT:VISA-1569; 10-04-2010)

For L classification purposes, ownership and control are the factors, which establish a qualifying relationship between a petitioner and other business entities. Both the U.S. and foreign businesses must be legal entities. In the United States, a business is usually in the form of a corporation, partnership, or proprietorship. "Ownership" means the legal right of possession with full power and authority to

control. "Control" means the right and authority to direct the management and operations of the business entity.

9 FAM 41.54 N6.3 Nonprofit Organizations

(CT:VISA-1569; 10-04-2010)

An organized religious, charitable, service, or other nonprofit organization must demonstrate that it is "...a firm or corporation or other legal entity or an affiliate or subsidiary thereof..." just as commercial businesses must do to qualify for L status. Nonprofit organizations are eligible to file individual petitions but not blanket petitions. (See 9 FAM 41.54 N13.2 paragraph b below.)

9 FAM 41.54 N6.4 Evidence Required by the Department of Homeland Security (DHS) in Determining Petitioner's Status

(CT:VISA-1569; 10-04-2010)

The Department of Homeland Security (DHS) regulations do not ordinarily require submission of extensive evidence of the petitioning organization's corporate structure. In questionable cases, however, DHS may seek whatever evidence is deemed necessary, including certified audits, balance sheets, profit and loss statements, non-certified audits (reviews, compilations), annual reports, tax records, etc.

9 FAM 41.54 N6.5 Size and Scope of Operation

(CT:VISA-1569; 10-04-2010)

While the petitioner's size does not limit its use of the intra-company transferee category (except for access to the blanket petition provision), DHS regulations do require that the petitioning organization demonstrate its ongoing international nature by continuing to do business in the United States and abroad. (See 9 FAM 41.54 N9 below.)

9 FAM 41.54 N6.6 Corporation is Separate Legal Entity From Owners

(CT:VISA-1569; 10-04-2010)

A corporation is a separate legal entity from its owners or stockholders for the purpose of qualifying an alien beneficiary as an intra-company transferee under INA 101(a)(15)(L). A corporation may employ and petition for its owners, even a sole owner.

9 FAM 41.54 N7 NATURE OF SERVICES PERFORMED

(CT:VISA-1569; 10-04-2010)

In order to be classifiable under INA 101(a)(15)(L), the services performed by the alien abroad, and those to be performed in the United States, must involve either "managerial capacity", "executive capacity", or "specialized knowledge". The beneficiary of a blanket petition must meet the higher standard of being a "specialized knowledge professional", rather than merely possessing specialized knowledge.

9 FAM 41.54 N7.1 "Qualifying Positions"

(CT:VISA-1569; 10-04-2010)

The following definitions are used by DHS in evaluating the positions to which L aliens are destined.

9 FAM 41.54 N7.1-1 "Managerial Capacity"

(CT:VISA-1569; 10-04-2010)

"Managerial capacity" means an assignment within an organization in which the employee primarily:

(1) Manages the organization, or a department, subdivision, function, or component of the organization;

(2) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(3) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised. If no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional.

9 FAM 41.54 N7.1-2 "Executive Capacity"

(CT:VISA-1569; 10-04-2010)

"Executive capacity" means an assignment within an organization in which the employee primarily:

(1) Directs the management of the organization or a major component or function of the organization;

(2) Establishes the goals and policies of the organization, component, or function;

(3) Exercises wide latitude in discretionary decision-making; and

(4) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

9 FAM 41.54 N7.1-3 "Specialized Knowledge"

(CT:VISA-1569; 10-04-2010)

"Specialized knowledge" means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

9 FAM 41.54 N7.1-4 "Specialized Knowledge Professional"

(CT:VISA-1569; 10-04-2010)

"Specialized knowledge professional" means an individual who has specialized knowledge as defined above and is a member of the professions as specified in INA 101(a)(32).

9 FAM 41.54 N7.2 Guidelines for Determining Managerial, Executive, Specialized Knowledge, and Specialized Knowledge Professional Capacity

9 FAM 41.54 N7.2-1 Managerial or Executive Capacity

(CT:VISA-1569; 10-04-2010)

a. An executive or managerial capacity requires a high level of authority and a broad range of job responsibilities. Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. In determining whether an alien supervises others, independent contractors as well as company employees can be considered. The duties of a position must primarily be of an executive or managerial nature, and a majority of the executive's or manager's time must be spent on duties relating to policy or operational management. This does not mean that the executive or manager cannot regularly apply his or her professional expertise to a particular problem. The definitions do not exclude activities that are common to managerial or executive positions such as

customer and public relations, lobbying, and contracting.

b. An executive or manager may direct a function within an organization. In general, however, individuals who control and directly perform a function within an organization, but do not have subordinate staff (except perhaps a personal staff), are more appropriately considered specialized knowledge employees.

c. If a small or medium-sized business supports a position wherein the duties are primarily executive or managerial, it can qualify under the L category. However, neither the title of a position nor ownership of the business is, by itself, an indicator of managerial or executive capacity. The sole employee of a company may qualify as an executive or manager, for L visa purposes, provided his or her primary function is to plan, organize, direct, and control an organization's major functions through other people.

9 FAM 41.54 N7.2-2 Specialized Knowledge Capacity

(CT:VISA-1569; 10-04-2010)

a. To serve in a specialized knowledge capacity, the alien's knowledge must be different from or surpass the ordinary or usual knowledge of an employee in the particular field and must have been gained through significant prior experience with the petitioning organization. A specialized knowledge employee must have an advanced level of expertise in his or her organization's processes and procedures or special knowledge of the organization, which is not readily available in the United States labor market.

b. Some characteristics of an employee who has specialized knowledge are that he or she:

(1) Possesses knowledge that is valuable to the employer's competitiveness in the market place;

(2) Is uniquely qualified to contribute to the U.S. employer's knowledge of foreign operating conditions;

(3) Has been utilized as a key employee abroad and has been given significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position; and

(4) Possesses knowledge, which can be gained only through extensive prior experience with the employer.

9 FAM 41.54 N7.2-3 Specialized Knowledge Professional Capacity

(CT:VISA-1569; 10-04-2010)

A specialized knowledge professional must possess the special or unusual knowledge specified in 9 FAM 41.54 N7.2-2 above, and be a member of a profession as described in INA 101(a)(32). To qualify under the blanket petition

provision (see 9 FAM 41.54 N13 below), an alien must be a manager, executive, or specialized knowledge professional.

9 FAM 41.54 N7.3 L Status Not Applicable to Skilled Workers

(CT:VISA-1569; 10-04-2010)

Petitions to accord L status may be approved for persons with specialized knowledge, but not for persons who are merely skilled workers. Being a "skilled worker" (i.e., one whose skill and knowledge enable one to produce a product through physical or skilled labor) does not in itself qualify an alien for the "specialized knowledge" category. Specialized knowledge capability is based on the beneficiary's special knowledge of a business firm's product or service, management operations, decision-making process, or similar elements that are not readily available in the U.S. labor market rather than on his or her level of training or skill. INA 101(a)(15)(L) was not intended to alleviate or remedy a shortage of U.S. workers; the temporary worker provisions of INA 101(a)(15)(H) provide the appropriate means for the admission of workers who are in short supply in the United States.

9 FAM 41.54 N7.4 Beneficiary Need Not Perform Same Work in the United States as Abroad

(CT:VISA-1569; 10-04-2010)

To qualify for an L visa, the beneficiary must be assigned to a position in the United States in either the same category (i.e., managerial, executive, or involving specialized knowledge) as the position held abroad, or in one of the other qualifying categories. The beneficiary need not be coming to perform the same work that was performed abroad. Promotions within the qualifying categories are possible (e.g., from specialized knowledge employee to manager).

9 FAM 41.54 N7.5 Full-time Service Required but Not Entirely in the United States

(CT:VISA-1569; 10-04-2010)

In general, the intent of the L-1 classification is the intra-company transfer to the United States of full-time executive, management, or specialized knowledge personnel. However, while full-time employment by the beneficiary is anticipated, INA 101(a)(15)(L) does not require that the beneficiary perform full-time services within the United States. An executive of a company with branch offices in Canada and the United States, for example, could divide normal work hours between those offices and still qualify for an L-1 visa. The alien's principal purpose while in the United States, however, must be consistent with L status.

Therefore, if an alien lived in the United States and commuted to employment in Canada or Mexico, and only occasionally worked in the United States, the alien would normally not qualify for L-1 status since the principal purpose for being in the United States would not relate to L employment. An alien who lived in Canada and came to the United States occasionally to work as an executive for the U.S. branch operation, however, would normally qualify for L-1 status since that alien's principal purpose for coming to the United States would be consistent with L classification.

9 FAM 41.54 N8 EMPLOYER-EMPLOYEE RELATIONSHIP

(CT:VISA-1569; 10-04-2010)

The essential element in determining the existence of an "employer-employee" relationship is the right of control; that is, the right of the employer to order and control the employee in the performance of his or her work. Possession of the authority to engage or the authority to discharge is very strong evidence of the existence of an employer-employee relationship.

9 FAM 41.54 N8.1 Source of Remuneration and Benefits Not Controlling

(CT:VISA-1569; 10-04-2010)

The source of the beneficiary's salary and benefits while in the United States (i.e., whether the beneficiary will be paid by the U.S. or foreign affiliate of the petitioning company) is not controlling in determining eligibility for L status. In addition, the employer-employee relationship encompasses a situation in which the beneficiary will not be paid directly by the petitioner, and such a beneficiary is not precluded from establishing eligibility for L classification.

9 FAM 41.54 N8.2 Employment in the United States Directly by Foreign Company Not Qualifying

(CT:VISA-1742; 10-14-2011)

A beneficiary who will be employed in the United States directly by a foreign company and who will not be controlled in any way by (and thus, in fact, not have any employment relationship to) the foreign company's office in the United States does not qualify as an intra-company transferee. A beneficiary coming to the United States to serve as the chief executive of the U.S. branch of the company would only have to show that he or she receives general supervision or direction from higher level executives, the board of directors, or the stockholders of the organization.

9 FAM 41.54 N9 PETITIONER MUST BE DOING BUSINESS IN THE UNITED STATES AND AT LEAST ONE OTHER COUNTRY

9 FAM 41.54 N9.1 "Doing Business"

(CT:VISA-1569; 10-04-2010)

"Doing business" means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

9 FAM 41.54 N9.2 Criteria for "Doing Business"

(CT:VISA-1569; 10-04-2010)

A qualifying organization under INA 101(a)(15)(L) must, for the duration of the intra-company transferee's stay in the United States, be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country. (For employees coming to open or be employed in a new office in the United States, (see 9 FAM 41.54 N11 below)). Company representatives and liaison offices which provide services in the United States, even if the services are to a company outside the United States, are included in the "doing business" definition and aliens who perform such services may qualify for L-1 status.

9 FAM 41.54 N9.3 Transfer to United States of Employees Unattached to Foreign Entity

(CT:VISA-1569; 10-04-2010)

A U.S. company, which is doing business as an employer in the United States and in at least one foreign country, can utilize the L classification to transfer to the United States employees abroad who are unattached to a foreign entity. The reverse of this situation, however, is not appropriate. A foreign organization must have, or be in the process of establishing, a legal entity in the United States which is, or will be, doing business as an employer in order to transfer an employee under section 101(a)(15)(L).

9 FAM 41.54 N9.4 Organization Must Demonstrate Ongoing International Nature

(CT:VISA-1569; 10-04-2010)

The DHS regulations require a qualifying organization to demonstrate its ongoing international nature. The L classification was not created for self-employed persons to enter the United States to continue self-employment (unless they are otherwise qualified for L status), nor was the L classification intended to accommodate the complete relocation of foreign businesses to the United States.

9 FAM 41.54 N10 QUALIFYING EXPERIENCE REQUIREMENT

(CT:VISA-1569; 10-04-2010)

INA 101(a)(15)(L) requires the beneficiary of an intra-company transferee petition to have been employed continuously by the petitioner, or by an affiliate or subsidiary thereof, for one year within the three years preceding the beneficiary's application for admission into the United States.

9 FAM 41.54 N10.1 Requiring Prior Continuous One-Year, Full-Time Employment

(CT:VISA-1569; 10-04-2010)

a. While not expressly stated in the INA or regulations, INA 101(a)(15)(L) contemplates that the beneficiary's qualifying experience with the petitioner must have been continuous full-time employment, and not continuous part-time employment. Several years of part-time employment equaling one year in aggregate cannot be viewed as meeting the requirement.

b. Full-time services divided among affiliated companies, each using the employee on a part-time basis, however, constitute full-time employment if the aggregate time meets or exceeds the hours of a full-time position.

9 FAM 41.54 N10.2 Requiring Prior Continuous One-Year Employment Abroad

(CT:VISA-1569; 10-04-2010)

The beneficiary's one year of qualifying experience with the petitioner must be wholly outside the United States. Time spent working for the petitioning firm in the United States does not qualify.

9 FAM 41.54 N10.3 Time in the United States for

Foreign Employer or Brief Business/Pleasure Trips Not To Interrupt Continuity of Employment Abroad

(CT:VISA-1569; 10-04-2010)

Periods spent in the United States in any authorized capacity on behalf of the foreign employer or a parent, branch, affiliate, or subsidiary thereof, and brief trips to the United States for business or pleasure, do not interrupt the continuity of the one year of continuous employment abroad for L-1 status, but do not count toward fulfillment of that requirement. Such periods spent in the United States may follow the year of employment abroad and immediately precede application for L-1 status, so long as the required one-year of qualifying employment during the past three years has been served abroad.

9 FAM 41.54 N11 OPENING OF NEW OFFICE

9 FAM 41.54 N11.1 "New Office"

(CT:VISA-1569; 10-04-2010)

"New office" means an organization, which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

9 FAM 41.54 N11.2 Qualified Employees of New Offices May Receive L Status

(CT:VISA-1569; 10-04-2010)

INA 101(a)(15)(L) does not require the beneficiary of an L petition to be coming for employment at a pre-existing, U.S.-based office of the employer. A petition may be approved for a beneficiary who is otherwise classifiable under INA 101(a)(15)(L) and who is coming to establish an office (i.e., commence business) in the United States for the petitioner. An alien in a managerial, executive, or specialized knowledge capacity may come to open or be employed in a new office.

9 FAM 41.54 N11.3 Managers and Executives Establishing or Joining New Office

(CT:VISA-1569; 10-04-2010)

a. A petitioner who seeks L status for a manager or executive coming to open or to be employed in a new office must submit evidence:

   (1) That sufficient physical premises to house the new office have been secured;

   (2) That the beneficiary was employed for one continuous year in the three-

year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and

(3) That the intended U.S. operation, within one year of approval of the petition, will support an executive or managerial position.

b. While it is expected that a manager or executive in a new office will be more than normally involved in day-to-day operations during the initial phases of the business, he or she must also have authority and plans to hire staff and have wide latitude in making decisions about the goals and management of the organization.

9 FAM 41.54 N11.4 Aliens with Specialized Knowledge Establishing or Joining New Office

(CT:VISA-1569; 10-04-2010)

A petitioner seeking the entry of an alien with specialized knowledge to open or be employed in a new office must demonstrate that:

(1) Sufficient physical premises to house the new office have been secured;

(2) The business entity in the United States is or will be a qualifying organization as described in 9 FAM 41.54 N6.1-1; and

(3) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

9 FAM 41.54 N11.5 Petition Validity for Employees of New Offices Limited to One Year

(CT:VISA-1569; 10-04-2010)

A petition for a qualified employee of a new office will be approved for a period not to exceed one year, after which the petitioner must demonstrate that it is doing business as defined in 9 FAM 41.54 N9 above in order for the petition and alien's stay to be extended beyond one year.

9 FAM 41.54 N12 INDIVIDUAL PETITION PROCEDURES

9 FAM 41.54 N12.1 Using Form I-129, Petition for a Nonimmigrant Worker, to File Individual Petition

(CT:VISA-1569; 10-04-2010)

An employer must file Form I-129, Petition for a Nonimmigrant Worker, with DHS to accord status as an intra-company transferee. Form I-129 is also used to request extensions of petition validity and extensions of stay in L status. The form must be filed with the DHS Service Center, which has jurisdiction over the area where the alien will perform services.

9 FAM 41.54 N12.2 Filing of Individual Petitions for Canadian Citizens

(CT:VISA-1569; 10-04-2010)

a. A U.S. or foreign employer seeking to classify a citizen of Canada as an intra-company transferee may file an individual petition in duplicate on Form I-129, Petition for a Nonimmigrant Worker, in conjunction with the Canadian citizen's application for admission. A Canadian citizen may present Form I-129, along with supporting documentation, to an immigration officer at a Class A port of entry (POE), a U.S. airport handling international traffic, or a U.S. pre-clearance or pre-flight station at the time of applying for admission. The petitioning employer need not appear, but the Form I-129 must bear the authorized signature of the petitioner.

b. The availability of the above procedure does not preclude the advance filing of an individual petition with DHS, in which case the beneficiary may present a copy of the approved Form I-797, Notice of Action, at a POE.

9 FAM 41.54 N12.3 Notifying Petitioner of Petition Approval

(CT:VISA-1569; 10-04-2010)

The DHS uses Form I-797, Notice of Action, to notify the petitioner that the L petition filed by the petitioner has been approved. DHS must notify the petitioner of the approval of an individual or blanket petition within 30 days after a completed petition has been filed. Form I-797 is also used to advise the petitioner that an extension of petition validity and extension of stay in L status for the employee has been granted. The petitioner may furnish Form I-797 to the employee for the purpose of making a visa appointment, or to facilitate the employee's entry into the United States, either initially or after a temporary absence abroad during the employee's stay in L status.

9 FAM 41.54 N12.4 The Procedure for Issuing

Individual Petition L Visas

(CT:VISA-2230; 12-03-2014)

Issued visas must be annotated for the principal alien and for any derivative spouse or child. The annotation should also state the name of the company or qualifying entity that the applicant will be primarily working for as it is listed in the Petition Information Management Service (PIMS) or PCQS record.

Example Individual L Annotations:

MUST PRESENT I-797 AT POE
PN-[PETITIONER NAME]
P#-[PETITION RECEIPT NUMBER] PED-[PETITION EXPIRATION DATE]

Individual L Derivatives Annotations:

P.A.: JOHN DOE
PN-[PETITIONER NAME]
P#-[PETITION RECEIPT NUMBER] PED-[PETITION EXPIRATION DATE]

9 FAM 41.54 N13 BLANKET PETITION PROCEDURES

9 FAM 41.54 N13.1 Using Form I-129, Petition for a Nonimmigrant Worker, to File Blanket Petition

(CT:VISA-1569; 10-04-2010)

Certain petitioners seeking the classification of multiple aliens as intra-company transferees may file a single blanket petition with DHS. Qualified petitioners must use Form I-129 to file for approval of a blanket petition with the DHS Service Center having jurisdiction over the area where the petitioner is located. Form I-129 must also be filed in advance with the appropriate DHS Service Center for Canadian citizens who wish to enter the United States as L nonimmigrants under the blanket petition provision (see 9 FAM 41.54 N13.4-2 below). The DHS Service Center is required to notify the petitioner of the approval of a blanket petition within 30 days after a completed petition has been filed.

9 FAM 41.54 N13.2 Requirements for Petitioners

(CT:VISA-1569; 10-04-2010)

a. A U.S. petitioner, which meets the following requirements, may file a blanket petition seeking continuing approval of itself and its specified parent, branches, subsidiaries, and affiliates as qualifying organizations under INA 101(a)(15)(L):

(1) The petitioner and each of the specified qualifying organizations are engaged in commercial trade or services;

(2) The petitioner has an office in the United States that has been doing business for one year or more;

(3) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and

(4) The petitioner and the other qualifying organizations:

(a) Have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the past 12 months; or

(b) Have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or

(c) Have a U.S. work force of at least 1,000 employees.

b. The blanket petition provision is meant to serve only relatively large, established companies having multi-layered structures and numerous related business entities. Such companies usually have an established program for rotating personnel and, in general, are the type of companies for which the L classification was created. The criteria to qualify for blanket petitions are formulated to exclude small and nonprofit organizations. Such organizations must continue to file an individual petition for each beneficiary.

9 FAM 41.54 N13.3 Requirements for Beneficiaries

(CT:VISA-1569; 10-04-2010)

The blanket petition provision is available only to managers, executives, and specialized knowledge professionals (see 9 FAM 41.54 N7.1-4 and 9 FAM 41.54 N7.2-3 above) who are destined to work in an established office in the United States (i.e., aliens seeking to open or be employed in a "new" office (see 9 FAM 41.54 N11 above) do not qualify). Aliens who possess specialized knowledge, but who are not specialized knowledge professionals, must obtain L-1 status through an individual petition. An alien may not apply for a visa under the blanket petition procedure if an individual petition has been filed on his or her behalf.

9 FAM 41.54 N13.4 Documents Required to Apply for Visa or Admission to United States Under Blanket Petition

9 FAM 41.54 N13.4-1 Aliens Requiring Visas

(CT:VISA-1831; 05-01-2012)

a. When a qualifying organization listed in an approved blanket petition wishes to

transfer an alien abroad who requires a visa to another listed qualifying organization in the United States, that organization must complete a Form I-129-S, Nonimmigrant Petition Based on Blanket L Petition, in an original and three copies. The qualifying organization must retain one copy for its records and send the original and two copies to the alien beneficiary. A copy of the Form I-797, Notice of Action, notifying the petitioner of the approval of the blanket petition (which will identify the organizations included in the petition) must be attached to the original and each copy of Form I-129-S.

b. After receipt of Form I-797 and Form I-129-S, a qualified employee who is being transferred to the United States may use these documents to apply at a consular office for visa issuance within six months of the date on Form I-129-S.

9 FAM 41.54 N13.4-2 Canadian Citizens Seeking L Classification Under Blanket Petitions

(CT:VISA-1831; 05-01-2012)

Citizens of Canada seeking L status under a blanket petition must present the original and two copies of Form I-129-S along with three copies of the Form I-797, to an immigration officer at a Class A port of entry (POE), a U.S. airport handling international traffic, or a U.S. pre-clearance/pre-flight station. The availability of this procedure does not preclude the advance filing of Form I-129-S with the DHS Service Center where the blanket petition was approved.

9 FAM 41.54 N13.5 Evaluating Qualifications of Blanket L Petition Beneficiaries Requiring Visas

(CT:VISA-1569; 10-04-2010)

Consular officers have the authority and responsibility for verifying the qualifications of individual managers, executives, and specialized knowledge professionals who are seeking L classification under the blanket petition provision, and who are outside the United States and require visas. In addition to presenting the required number of copies of Forms I-129-S and Form I-797, (see 9 FAM 41.54 N13.4 above), the alien must establish that he or she is either a manager, executive, or specialized knowledge professional employed by a qualifying organization. The consular officer must determine that the position in the United States is with the organization named on the approved petition, that the job is for a manager, executive, or specialized knowledge professional, and that the applicant has the requisite employment with the organization abroad for twelve months within the previous three years.

NOTE: Section 413 of Public Law 108-477 changed the previous employment requirement for L-1 blanket petitions from six months to twelve months, effective June 6, 2005. However, this only applies to initial applicants for an L-1 nonimmigrant visa on the basis of a blanket petition filed with USCIS. Therefore,

an alien who was classified as an L-1 nonimmigrant prior to June 6, 2005 on the basis of the blanket petition would continue to be subject to the six-month employment requirement.

9 FAM 41.54 N13.6 The Procedure for Issuing Blanket-Petition L Visas

(CT:VISA-2236; 12-17-2014)

Consular officers may grant L classification only in clearly approvable applications. If the visa is issued, it should be annotated "Blanket L-1" for the principal alien and "Blanket L-2" for any derivative spouse or child. The annotation should also state the name of the company or qualifying entity that the applicant will be primarily working for, that is on the Form I-129-S, Nonimmigrant Petition Based on Blanket L Petition. This company should be listed in PIMS; either on the Blanket I-797 approval notice or in the Petitioner alias field in PIMS. The second annotation line should be retained for any necessary clearance or waiver information, or duration and purpose information when visa validity is limited, see 9 FAM 41.113 PN11-PN13.

Template for Blanket L Annotations:

BLANKET L-1; MUST PRESENT I-129S AT POE
"Clearance received on (date)" or "212(D)(3)(A): <waiver information>"
PN-<PETITIONER NAME>
P#-<PETITION RECEIPT NUMBER> I-129S EXP: <EXP DATE>

Template for Blanket L Derivatives Annotations:
BLANKET L-2; P.A.: JOHN DOE
"Clearance received on (date)" or "212(D)(3)(A): <waiver information>"
PN-<PETITIONER NAME>
P#-<PETITION RECEIPT NUMBER> I-129S EXP: <EXP DATE>

The consular officer must also be sure to properly endorse all three copies of the alien's Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, scan one copy into the case in NIV, and return the original and other copy to the applicant. (NOTE: Once a copy of the Form I-129-S is scanned into the case, there is no requirement to keep a physical copy of the form which can be destroyed.) Proper endorsement includes noting the approval basis and adjudication date in the "approved as" box; listing the validity dates from the adjudication date to three years from that date; and a post or officer stamp in addition to the adjudication officer's initials or signature in the "action block." At the time of the interview, you should advise the alien to hand-carry these forms with them to the U.S. Port of Entry (POE).

Determining Validity Dates of I-129S Petition

The consular officer must determine the validity dates for the I-129S petition. For initial Blanket L applicants, this date should either be three years or based on the

"Dates of intended employment" as written in Part 4, question c of the Form I-129S by the petitioner, whichever is less.

For renewal Blanket L applicants, you must not only consider what the petitioner is requesting, but also determine the applicant's remaining time under the maximum period of stay as outlined in 9 FAM 41.54 N17. In order to assist U.S. Customs and Border Protection (CBP) with ensuring Blanket L visa applicants are not admitted beyond their maximum period of stay, the consular officer must limit the approval dates of the I-129S when maximum period of stay will be reached prior to the dates requested by the petitioner. For example, if a Blanket L-1A Executive or Manager has already spent six years in L-1 status in the United States, you should limit the approval of the I-129S to one year to ensure they are not admitted in excess of the seven year maximum period of stay, even if the employer is asking for a longer period.

9 FAM 41.54 N13.7 The Procedure For Denying Blanket-Petition Based L Visa

(CT:VISA-1831; 05-01-2012)

a. If the consular officer determines that an alien has not established his or her eligibility for an L visa under a blanket petition, his or her decision will be final. The consular officer shall record the reasons for the decision on all copies of Form I-129-S, retain one copy, give one copy to the alien, and return the original Form I-129-S to the DHS Regional Service Center which approved the blanket petition. Note that this is not a request to revoke a petition, it is merely notification of the final decision by the consular officer.

b. The petitioner may continue to seek L classification for the alien by filing a Form I-129, individual petition on his or her behalf with the DHS Service Center having jurisdiction over the area of intended employment. The petition must state the reason why the alien was denied an L visa under the blanket procedure and must specify the consular office, which made the determination and the date of the decision.

9 FAM 41.54 N13.8 Filing Individual L Petition Instead of Using Blanket Petition Procedure

(CT:VISA-1569; 10-04-2010)

Although an alien might qualify to be a beneficiary of an L blanket petition, the petitioner may file an individual L petition on behalf of that alien in lieu of using the blanket petition procedure. When exercising this option, the petitioner must certify that the alien will not apply for a blanket L visa. The petitioner and other qualifying organizations listed on a blanket petition may not seek L classification for the same alien under both procedures, unless a consular officer first denies eligibility under the blanket petition provision.

9 FAM 41.54 N13.9 Reassigning L Blanket Petition Beneficiary

(CT:VISA-1569; 10-04-2010)

An alien admitted under an approved L blanket petition may be reassigned to any organization listed in the approved petition during his or her authorized stay without referral to DHS, if the alien will be performing virtually the same job duties. If the alien will be performing different duties, the petitioner must complete a new Certificate of Eligibility Form I-129-S, Nonimmigrant Petition Based on Blanket L Petition, and file it with the DHS Regional Service Center, which approved the blanket petition.

9 FAM 41.54 N14 VALIDITY OF APPROVED PETITIONS

9 FAM 41.54 N14.1 Petition Approval

(CT:VISA-1569; 10-04-2010)

a. The approval of a petition by the Department of Homeland Security (DHS) or by the Department of Labor does not establish that the alien is eligible to receive a nonimmigrant visa (NIV). You may not authorize a petition-based NIV without verification of petition approval through the Petition Information Management Service (PIMS).

b. PIMS is the sole source of confirmation that a petition for a visa has been approved. Verification in PIMS is prima facie evidence of entitlement to L classification.

c. A consular officer must suspend action on an alien's application and submit a report to the approving DHS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(L) is not entitled to the classification as approved.

9 FAM 41.54 N14.2 Evidence Forming Basis for L Visa Issuance

(CT:VISA-1693; 09-19-2011)

a. The basis for L visa eligibility consists of an approved Form I-129, Petition for a Nonimmigrant Worker, that must be verified either through PIMS or through PCQS before issuing a visa. The Form I-797 is no longer required to be presented to a consular officer at the time of the applicant's interview.

b. Posts must use either the electronic PIMS record created by the KCC or the record obtained through PCQS to verify petition approval. Posts are able to

access the details of approved NIV petitions through the Consular Consolidated Database (CCD), through the Petition Information Management Service (PIMS) Petition Report, or through the Person Centric Query Service (PCQS) in the CCD under the Cross Applications tab.

c. A valid Form I-797 must include the date of the Notice, the name of the petitioner, the name of the beneficiary, the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving DHS office. The paper Form I-797 is an unsigned computer-generated form, which contains the receipt number, and can be used only to make an L visa appointment. In the event PIMS does not yet contain the record, post may send an e-mail with the receipt number to PIMS@state.gov. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days.

d. If PIMS does not contain the petition approval, before sending an e-mail to KCC, post has the option to look for petition approval in PCQS in the CCD under the Cross Applications tab. In PCQS, under Search Criteria, select Receipt Number; then enter the number from the Form I-797, e.g., EAC1234567890. First, search just CISCOR to find the petition, but if not found in CISCOR, you should also check CLAIMS 3. If post finds a petition approval in PCQS that was not in PIMS, the post should send an e-mail to PIMS@state.gov as follows: Petition with Receipt Number EAC1234567890 was found in PCQS but not in PIMS. You may not authorize a petition-based NIV without verification of petition approval either through PIMS or PCQS.

9 FAM 41.54 N14.3 Consular Consolidated Database (CCD) Access to Approved Nonimmigrant Visa (NIV) Petitions

(CT:VISA-1693; 09-19-2011)

a. PIMS provides confirmation that a petition for a visa has been approved. Verification in PIMS is prima facie evidence of entitlement to L classification.

b. Posts must use the electronic PIMS record created by the KCC, or the petition record found through the PCQS, to verify petition approval. In regard to PIMS, it is listed in the CCD under a sub-category of the NIV menu called "NIV Petitions." PIMS allows all information on a petitioner, petition, and/or beneficiary to be linked through a centrally managed CCD service.

c. The electronic PIMS record created by the KCC is used to determine petition approval and visa eligibility. The PIMS Petition Report contains a record of all petitioners recorded by the KCC as having approved petitions since 2004. In addition, the KCC FPU has provided informational memos on a large percentage of these petitioners. Each new, approved petition is linked to a base petitioner record, allowing superior tracking of NIV petitioner and petition information. As

a result of this change, the KCC has ceased e-mailing scanned copies of approved NIV petitions to posts.

d. If you are unable to immediately locate information on a specific petition, you may send an e-mail to PIMS@state.gov. KCC's FPU will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within 2 working days. You may submit your request to KCC only within five (5) working days of the scheduled interview date and you must have checked PIMS before submitting to KCC. KCC will check the USCIS CLAIMS database, and will upload the CLAIMS report into PIMS so that you can proceed with the scheduled interview. KCC will not process PIMS requests submitted by post prior to the five day window. Please be sure to conduct a PIMS query before sending in these special requests, in order to reduce KCC's workload.

e. Posts may use approved Form I-129 and Form I-797 presented at post as sufficient proof to schedule an appointment, or may schedule an appointment based on the applicant's confirmation that the petition has been approved, but only verification of petition approval in PIMS or through PCQS is sufficient evidence for visa adjudication.

9 FAM 41.54 N14.4 Individual Petitions

(CT:VISA-1569; 10-04-2010)

a. Approved individual L petitions, except those involving new offices, are initially valid for the period of established need for the beneficiary's services, not to exceed three years. If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year. (See 9 FAM 41.54 N11.5 above.)

b. To extend the validity of an individual L petition, the petitioner must file Form I-129, Petition for a Nonimmigrant Worker, with the jurisdictional DHS Regional Service Center. Supporting documentation is not required except in petitions involving new offices, in which case the petitioner must demonstrate that it is doing business, as described in 9 FAM 41.54 N9 above, in order to extend the petition to indefinite validity. A petition extension may be filed only if the validity of the original petition has not expired.

9 FAM 41.54 N14.5 Blanket Petitions

(CT:VISA-1831; 05-01-2012)

a. An approved L blanket petition is valid initially for a period of three years and may be extended indefinitely thereafter if the qualifying organizations have complied with the regulations governing the blanket petition provision. To request indefinite petition validity, the petitioner must file a new Form I-129, Petition for a Nonimmigrant Worker, along with a copy of the previous approval

notice Form I-797, Notice of Action, and a report of admissions during the preceding three years. This report must include a list of the aliens admitted during the preceding three-year period, the positions held, the employing entity(ies), and the dates of initial admission and final departure of each alien. The petitioner must establish that it still meets the criteria for filing a blanket petition, and must document any changes in the business relationships listed on the original petition and any additional qualifying organizations it wishes to include.

b. Once the initial three-year validity period of a blanket petition has expired, if the petitioner fails to request an indefinite validity blanket petition, or if the request for indefinite validity is denied, the petitioner and its other qualifying organizations must file individual petitions on behalf of its employees until another three years have elapsed. Thereafter, the petitioner may seek approval of a new blanket petition.

9 FAM 41.54 N14.5-1 Blanket L-1 Fees

(CT:VISA-2008; 07-08-2013)

a. INA Section 214(c)(12)(B) requires the collection of a Fraud Prevention and Detection fee in the amount of $500 from applicants for L visas who are covered under a blanket petition for L status. This fee must be collected with the MRV fee whether or not a visa is issued, for all first-time blanket L applications under any Form I-129S, Nonimmigrant Petition Based on Blanket L Petition. If a subsequent L-1 visa application is based on a new Form I-129S, the Fraud Prevention and Detection fee must be collected again.

b. Section 402 of Public Law 111-230, as amended by Public Law 111-347, (hereinafter referred to by its colloquial name, the Border Security Act of 2010), provides for the payment of an additional fee, of $2,000 in certain H-1B cases and $2,250 in certain L-1 cases filed before October 1, 2015, if the petitioning employer has 50 or more employees in the United States and more than 50 percent of whom are in H-1B or L-1 status. U.S. Citizenship and Immigration Services (USCIS) collects these fees domestically as part of the petition process for H-1B and individual L-1 status. Consular sections must collect the $2,250 fee from any applicants for blanket L-1 visas whose employers are subject to the fee. CBP (or USCIS, in cases where the Form I-129S is filed directly with USCIS) will collect this fee for aliens who are not required to obtain visas. Part 1A, "Data Collection," of Form I-129S, Nonimmigrant Petition Based on Blanket L Petition, asks two questions relative to Border Security Act fee applicability:

(1) Does the petitioner employ 50 or more individuals in the United States?

(2) If yes, are more than 50 percent of those individuals in H-1B or L nonimmigrant status?

c. If the petitioner answers “yes” to both questions, the Border Security Act fee

for blanket L-1 applications applies. (Note: L-2 derivatives are not subject to the fee.) If the fee applies, the applicant should be directed to pay the additional fee on behalf of the petitioner to the consular cashier at the time of application. ACRS code 20 (L-1 Border Security Fee-50/50 criteria) should be used for this purpose. This $2,250 fee for blanket L-1 visa applicants must be charged whether or not the visa is issued, and applies in all first-time blanket L applications under any I-129S petition. Thus, if an applicant presents a Form I-129S with Part 1A responses by the employer that indicate the fee is required, post must collect the fee on the initial presentation of that Form I-129S. If the applicant loses his or her passport or has a limited validity and applies for a new visa prior to the expiration of the Form I-129S, no $2,250 fee should be collected for the re-use of the Form I-129S. However, if the petitioner files a new Form I-129S (for example, to extend the applicant's time after the initial three years) or if the L-1 application presented by the applicant is based on a Form I-129S from another petitioner, then a new fee would be required. The Border Security Act fee is to be paid in addition to the $500 Fraud Prevention and Detection fee and the MRV fee.

9 FAM 41.54 N14.5-2 Effect of Blanket L-1 Fees on Reciprocity Fees

(CT:VISA-2008; 07-08-2013)

a. The Fraud Prevention and Detection fee and, if applicable under the criteria in 9 FAM 41.54 N14.5-2, the Border Security Act fee must be collected from a blanket L-1 applicant. In order to maintain reciprocal treatment regarding visas fees with the applicant’s country of nationality, the Fraud fee and/or Border Security Act fees must be deducted from any applicable reciprocity fees. The reciprocity fee paid should be the remainder of the cost after other applicable fees have been deducted.

b. For example, if an applicant has an $800 reciprocity fee, but has paid the $500 Fraud Prevention and Detection Fee, he or she would only be required to pay the remaining $300 of the reciprocity fee at time of issuance. Conversely, if an applicant’s reciprocity fee was $400 and they paid the $500 fee, they would have no further reciprocity fee obligation to pay at time of issuance.

9 FAM 41.54 N15 LENGTH OF STAY

(CT:VISA-2230; 12-03-2014)

a. A beneficiary may apply for admission to the United States only while the individual or blanket petition is valid. The beneficiary of an individual L petition must not be admitted on a date past the validity period of the petition. The beneficiary of a blanket petition may be admitted for up to three years even though the initial validity period of the blanket petition may expire before the end of the three-year period. If the blanket petition will expire before the end

of the three-year period, the burden is on the petitioner to file to extend the validity of the blanket petition, or to file an individual petition on the alien's behalf to authorize an alien beneficiary's L status in the United States.

b. The admission period for any alien under INA 101(a)(15)(L) must not exceed three years unless an extension of stay (see 9 FAM 41.54 N16 below) is granted.

9 FAM 41.54 N16 EXTENSIONS OF STAY

(CT:VISA-2230; 12-03-2014)

a. For the beneficiary of an individual L petition, the petitioner must request an extension of the alien's stay in the United States on Form I-129. The effective dates of the petition extension and the beneficiary's extension of stay, if authorized, must be the same.

b. When the alien is a beneficiary under a blanket petition, the petitioner must file a new Form I-129-S, Nonimmigrant Petition Based on Blanket L Petition, accompanied by a copy of the previous Form I-129-S, and must concurrently request extension of the blanket petition with indefinite validity if such validity has not already been granted.

c. Extensions of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The beneficiary must be physically present in the United States at the time the extension of stay petition is filed. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may ask DHS to cable notification of the petition extension to the consular office abroad where the alien will apply for another visa. When the maximum allowable period of stay in L classification has been reached (see 9 FAM 41.54 N17 below), no further extensions may be granted.

9 FAM 41.54 N17 LIMITATIONS ON TOTAL PERIODS OF STAY

(CT:VISA-2230; 12-03-2014)

a. The total period of stay for L aliens employed in a specialized knowledge capacity may not exceed five years. The maximum allowable period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted once these limits have been reached.

b. The total maximum period of stay will be calculated by determining the actual total number of days the alien is lawfully admitted and physically present in the United States in L category status. Additionally, time spent in H status in the

U.S. also accrues against the maximum authorized period of stay in L status (and vice versa). See 8 CFR 214.2(l)(12). Time spent as an L-2 dependent does not count against the maximum allowable period of stay available to a principal L-1 alien.

c. When an alien was initially admitted in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months in order to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by DHS in an amended, new, or extended petition at the time that the change occurred or based on a new Blanket L I-129S petition adjudication.

9 FAM 41.54 N18 READMISSION AFTER MAXIMUM TOTAL PERIOD OF STAY REACHED

(CT:VISA-1831; 05-01-2012)

a. When a nonimmigrant has spent the maximum allowable period of stay in the United States in L and/or H status, the alien may not be issued a visa or be readmitted to the United States under the L or H visa classification, nor may a new petition, extension, or change of status be approved for that alien under INA 101(a)(15)(L) or (H), unless the alien has resided and been physically present outside the United States for the immediate past year.

b. Brief trips to the United States for business or pleasure do not interrupt the one-year period abroad, but do not count towards fulfillment of that requirement. Periods when the alien fails to maintain status will be counted towards the applicable limitation; an alien may not circumvent the limit by violating his or her status.

9 FAM 41.54 N19 EXCEPTIONS TO LIMITATIONS ON READMISSION

(CT:VISA-1831; 05-01-2012)

The limitations on readmission described in 9 FAM 41.54 N18 above will not apply to aliens who did not reside continually in the United States, and, whose employment in the United States was seasonal or intermittent, or was for an aggregate of six months or less per year, nor to aliens who resided abroad and regularly commuted to the United States to engage in part-time employment. The alien must provide clear and convincing proof (e.g., evidence such as arrival and departure records, copies of tax returns, records of employment abroad) that he or she qualifies for these exceptions. The exceptions to limitations on readmission will not apply if the principal alien's dependents have been living continuously in the United States in L-2 status.

9 FAM 41.54 N20 VALIDITY OF L VISAS

9 FAM 41.54 N20.1 Maximum Validity of L Visa

(CT:VISA-2230; 12-03-2014)

a. The validity of an L visa may not exceed the period of validity shown in the Visa Reciprocity and Country Documents Finder. Consular officers are encouraged to issue L visas with the maximum validity permitted based on reciprocity, even though the initial validity period of the petition may expire earlier than the visa. See 9 FAM 41.112 N2 for discussion of the Department's policy regarding issuance of full validity visas.

b. The annotation field of each L visa for individual and blanket petition beneficiaries issued on or after March 15th, 2012 must include either the petition expiration date as verified in PIMS or PCQS for individual petitions, or the expiration of the approved Form I-129S for blanket petitions.

c. Posts are authorized to accept L visa applications and issue visas to qualified applicants up to 90 days in advance of applicants' beginning of employment status as noted on the Form I-797 or I-129S.

9 FAM 41.54 N20.1-1 L Visa Renewals

(CT:VISA-2230; 12-03-2014)

a. When an applicant applies for a new L visa before the current L visa expires, a consular officer should cancel the current visa and, if otherwise qualified, issue a new L visa for the maximum validity permitted based on reciprocity.

b. When the applicant’s current petition will expire shortly or the applicant has a new petition number with a validity date in the future, a consular officer must annotate the new visa with the current valid petition information only. U.S. Customs and Border Protection (CBP) will verify the existence of a valid petition upon entry at a Port of Entry regardless of the annotation on the visa.

9 FAM 41.54 N20.2 Limiting Validity of L Visas

(CT:VISA-2230; 12-03-2014)

Consular officers may restrict visa validity in some cases to less than the period of validity of the approved petition or authorized period of stay (for example, on the basis of reciprocity or the terms of an order waiving a ground of ineligibility). In any such case, in addition to the other notations required on the L visa, please see the notations required per 9 FAM 41.113 PN12.

9 FAM 41.54 N20.3 Reissuing Limited L Visas

(CT:VISA-2238; 12-19-2014)

When an L visa has been issued with a validity of less than the validity of the petition or authorized period of stay, consular officers may reissue the visa any number of times within the validity period of the petition or the authorized period of stay. If a fee is prescribed in the Visa Reciprocity and Country Documents Finder, posts must collect the visa application fee for each re-issuance of the L visa.

9 FAM 41.54 N21 SPOUSE AND CHILDREN OF L-1 ALIENS

9 FAM 41.54 N21.1 Derivative Classification

(CT:VISA-1831; 05-01-2012)

a. The spouse and children of an L-1 nonimmigrant who are accompanying or following to join the principal alien in the United States are entitled to L-2 classification and are subject to the same visa validity, period of admission, and limitation of stay as the L-1 alien. For a general discussion of the classification of the spouse and children of a nonimmigrant, (see 9 FAM 41.11 N4 and 9 FAM 41.11 N5).

b. A Canadian citizen spouse or child who is accompanying or following to join a Canadian citizen in L-1 status must be admitted as an L-2 nonimmigrant without requiring a visa. A non-Canadian citizen spouse or child must have an L-2 visa when applying for admission. (See 9 FAM Appendix D, Automated Visas Systems.)

c. If an L-1 nonimmigrant has maintained his or her family in the United States in L-2 status, he or she cannot qualify for exception from the five to seven-year limitation on total period of stay (see 9 FAM 41.54 N19 above).

9 FAM 41.54 N21.2 Verifying Principal Alien is Maintaining Status

(CT:VISA-1569; 10-04-2010)

When an alien applies for an L-2 visa to follow-to-join a principal alien already in the United States, you must be satisfied that the principal alien is maintaining L-1 status before issuing the visa. You should also reference 9 FAM 41.54 N14.3 which discusses checking the status of approved petitions in the Consular Consolidated Database (CCD).

9 FAM 41.54 N21.3 Employment in the United States Authorized for L-2 Dependent Aliens

(CT:VISA-1831; 05-01-2012)

Public Law 107-125 provides for work authorization for nonimmigrant spouses (L-2) of intracompany transferees (L-1). Therefore, in the case of an L-2 spouse who is accompanying or following to join the L-1 principal alien, the Attorney General must authorize the alien spouse to engage in employment in the United States and provide the spouse with an 'employment authorized' endorsement or other appropriate work permit.

9 FAM 41.54 N22 SERVANTS OF L NONIMMIGRANTS

(CT:VISA-803; 04-27-2006)

Personal or domestic servants seeking to accompany or follow to join L nonimmigrant employers may be issued B-1 visas, provided they meet the requirements of 9 FAM 41.31 N9.3-2.

9 FAM 41.54 N23 FORMER EXCHANGE VISITOR SUBJECT TO TWO-YEAR FOREIGN RESIDENCE REQUIREMENT

(CT:VISA-1569; 10-04-2010)

For instructions regarding requests for waivers of the two-year foreign residence requirement by L visa applicants who are former exchange visitors and subject to the two-year requirement of INA 212(e), (see 9 FAM 40.202 Notes).